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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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| In the Matter of | : |
| | : <u>COMPLAINT, COMPLIANCE ORDER,</u> |
| | : <u>AND NOTICE OF OPPORTUNITY</u> |
| SERVICIOS CARBAREON INC. | : |
| (AKA Resource Management, Inc.) | : <u>FOR HEARING</u> |
| PRD091018622 | : |
| PENUELAS, PR 00724 | : |
| | : |
| Respondent. | : Docket No. II RCRA-84-0307 |
| | : |
| Proceeding Under Section 3008 | : |
| of the Resource Conservation and | : |
| Recovery Act | : |
| -----X | : |

COMPLAINT

This administrative proceeding is instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq.

The Director of the Air and Waste Management Division of the U.S. Environmental Protection Agency ("EPA"), Region II, Complainant in this proceeding, has determined that Respondent, SERVICIOS CARBAREON INC. has violated Section 3005 of the Act, 42 U.S.C. §6925, and the regulations promulgated thereunder, as hereinafter specified:

1. Respondent owns and operates a facility located at Carr 385 Km 3 HM 5, Tall Aboa, PenueLAS, Puerto Rico 00724.
2. By notification dated September 15, 1980, Respondent informed EPA that it conducts activities at the facility involving "hazardous waste," as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. §6903(5) and in 40 CFR §261.3. By application dated November 11, 1980, Respondent requested a permit to conduct its hazardous waste activities.
3. On or about March 21 and 22, and August 14, 15 and 16, 1984, inspections of the facility were conducted by a duly-designated representatives of EPA pursuant to Section 3007 of the Act, 42 U.S.C. §6927. Said inspections were conducted for the purpose of enforcing the EPA regulations for hazardous waste management, 40 CFR Parts 260 through 265 and 270 (published in 45 Fed. Reg. 33073 et seq., May 19, 1980, and as later amended), promulgated pursuant to Subtitle C of the Act, 42 U.S.C. §6921 et seq.

4. 40 CFR §270.71(a)(1) states that during the interim status period the facility shall not treat, store, or dispose of hazardous waste by processes not specified in Part A of the permit application. At the time of the above referenced inspections, EPA learned that Respondent's facility was being used for the treatment of hazardous wastes by solidification. This process was not identified in Respondent's Part A of the permit application and EPA never issued a permit for this activity. Therefore, Respondent is in violation of 40 CFR §270.71(a)(1).

5. Section 3005(a) of the Act, 42 U.S.C. §6925(a) prohibits the storage, treatment and disposal of hazardous waste without a hazardous waste permit. At the time of the above referenced inspections, EPA learned that Respondent had disposed of hazardous wastes in the non-hazardous waste landfill on August 5, 1982, September 14, 1983, December 19, 1983 and July 9, 1984. Respondent never mentioned disposal of hazardous wastes in this landfill in the Part A of the permit application and did not receive a permit from EPA for this activity. Respondent was therefore in violation of Section 3005(a) of the Act.

6. Analyses of samples taken during the EPA inspection of March 21 and 22, 1984 reveals that hazardous waste was disposed in the area designated by Respondent as the non-hazardous land treatment area. Respondent is therefore in violation of Section 3005(a) of the Act.

7. 40 CFR §270.72(c) states that changes in the process for the treatment, storage or disposal of hazardous waste may be made at a facility or additional processes may be added if the owner or operator submits a revised Part A application prior to such a change (along with a justification explaining the need for the change) and the Director (EPA) approves the change. During the above referenced inspections, EPA learned that Respondent had moved the drum storage area identified in the Part A as being located on the northeast portion of the facility to the northwest side. The tank storage area had been moved from the northern portion of the facility to the southern side. In addition, the Part B permit application submitted by Respondent reveals other changes made at the facility without EPA's approval; a drum burial area was opened and closed in the central portion of the facility; a drum storage area was opened in the southern portion of the facility; and four immobilization areas were opened in the southern portion of the facility. Respondent did not request or receive approval from EPA for these changes. Respondent is therefore in violation of 40 CFR §270.72(c).

8. 40 CFR §270.72(d) states that changes in ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. During the above referenced inspections it was learned that Servicios Carbareon Inc., had changed name, owners and operator. The facility is now owned and operated by and known as Resource Management Inc. Respondent did not submit a revised Part A permit application prior to the change. Respondent was therefore in violation of 40 CFR §270.72(d).

9. 40 CFR §270.10(e)(4) states that at any time after promulgation of final regulations for the activities conducted at its facility, EPA may require the owner or operator of an existing TSD facility to submit Part B of the permit application by a specified date. The specified date must be at least six months from the date of the request to submit the Part B.

10. By letter dated February 4, 1983, EPA requested the submittal of Respondent's Part B by August 13, 1983. A copy of the letter is attached hereto as Appendix A.

11. By letter dated July 27, 1983, Respondent requested extension until September 15, 1983 for submittal of the Part B.

12. Complainant agreed to Respondent's requested extension.

13. Under cover of a letter dated September 15, 1983, Respondent submitted a Part B application.

14. Under cover of a letter dated June 20, 1984, Complainant issued Respondent a Notice of Deficiency (NOD) which contained a detailed description of the areas where Respondent's Part B application was deficient or incomplete. The NOD also established a new date of July 23, 1984, for the submission of a complete Part B application. A copy of the NOD is attached hereto as Appendix B.

15. By letter dated July 16, 1984 and a meeting on July 13, 1984, Respondent notified EPA that it could not meet the July 23 deadline for responding to the NOD.

16. Respondent was granted an extension to October 31, 1984 to submit a complete Part B permit application and was notified, by letter dated September 7, 1984, that EPA would consider citing Respondent for violation of 40 CFR §270.10(e)(4) upon further review of the matter. A copy of the letter is attached hereto as Appendix C.

17. Upon further review of the circumstances, EPA has determined that Respondent has had sufficient time and opportunity to develop a complete Part B application. Since to date Respondent has not submitted a complete Part B permit application, Respondent is in violation of 40 CFR §270.10(e)(4).

PROPOSED CIVIL PENALTY

In view of the above-cited violations, and pursuant to the authority of Section 3008 of RCRA, Complainant herewith proposes the assessment of a civil penalty in the amount of \$130,000 against SERVICIOS CARBAREON INC. (AKA, Resource Management Inc.) for the violation specified hereinabove as follows:

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| - for the violation of Section 3005 of RCRA, 42 U.S.C. §6925(a) disposal of hazardous waste in non-hazardous waste landfill | - | \$25,000 |
| disposal of hazardous waste in non-hazardous waste treatment area | - | 25,000 |
| - for the violation of 40 CFR §270.71(a)(1) | - | 25,000 |
| - for the violation of 40 CFR §270.72(c) | - | 25,000 |
| - for the violation of 40 CFR §270.72(d) | - | 15,000 |
| - for the violation of 40 CFR §270.10(e)(4) | - | 15,000 |
| | | <hr/> |
| | | \$130,000 |

COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of RCRA, Complainant herewith issues the following Compliance Order against Respondent herein:

1. Respondent shall, by no later than 60 days after the effective date of this Order, cease to store, treat or dispose of wastes using processes not identified in the Part A permit application. Continued operation of the facility as a storage, treatment and disposal facility shall thereafter be contingent upon Respondent's submittal of a revised Part A application, a complete Part B permit application by October 31, 1984, and the approval of the Part A application by EPA. Both documents are to include the proper name, operator and owner of the facility.

2. Respondent shall, by no later than 30 days after the effective date of this Compliance Order, submit to EPA and to the Puerto Rico Environmental Quality Board a closure plan for the non-interim status areas that were used to dispose of hazardous wastes. The closure plan shall be sufficient to comply with 40 CFR Part 265 Subpart G and Puerto Rico Rule 850(A) and must propose studies and methods to identify and remove hazardous waste contamination from these areas, as well as a schedule of implementation.

3. Respondent shall implement the closure plan within 30 days of its approval.

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(a)(3) of RCRA, a violator failing to take corrective action within the time specified in a Final Compliance Order is liable for a civil penalty of up to \$25,000 for each day of continued

noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator pursuant to the authority of the Act.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 3008(b) of RCRA, and in accordance with EPA's Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22, 45 Fed. Reg. 24360 (April 9, 1980) (a copy of which accompanies this Complaint, Compliance Order, and Notice of Opportunity for Hearing), you have the right to request a hearing to contest any material fact set out in the Complaint, or to contest the appropriateness of the proposed penalty, or the terms of the Compliance Order. (Consistent with the provisions of Section 3008(b) of RCRA, the hearing provided will be noticed and open to the general public, should you specifically request such a public hearing. In the absence of such a specific request, however, public notice of a scheduled hearing will not be published.)

To avoid being found in default, and having the proposed civil penalty assessed and the Compliance Order confirmed without further proceedings, you must file a written answer to the Complaint, which may include a request for a hearing. Your answer (if any) must be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York, 10278, and must be filed within thirty (30) days of your receipt of this Complaint, Compliance Order, and Notice of Opportunity for Hearing. Your answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, and should contain (1) a clear statement of the facts which constitute the grounds of your defense, and (2) a concise statement of the contentions which you intend to place in issue at the hearing.

The denial of any material fact, or the raising of any affirmative defense, will be construed as a request for a hearing. Failure to deny any of the factual allegations in the Complaint will be deemed to constitute an admission of the undenied allegations. Your failure to file a written answer within thirty (30) days of receipt of this instrument will be deemed to represent your admission of all facts alleged in the Complaint, and a waiver of your right to a formal hearing to contest any of the facts alleged by the Complainant. Your default will result in the final issuance of the Compliance Order, and assessment of the proposed civil penalty, without further proceedings.

INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a hearing, the EPA encourages settlement of this proceeding consistent with the provisions of RCRA. At an informal

conference with a representative of the Complainant you may comment on the charges and provide whatever additional information you feel is relevant to the disposition of this matter, including any actions you have taken to correct the violation, and any other special circumstances you care to raise. The Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with you in such conference, or to recommend that any or all of the charges be dismissed, if the circumstances so warrant. Your request for an informal conference and other questions that you may have regarding this Complaint, Compliance Order, and Notice of Opportunity for Hearing should be directed to:

Bruce Adler - (212) 264-9898

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to or simultaneously with the adjudicatory hearing procedure. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such conference will be embodied in a written Consent Agreement and Final Compliance Order to be issued by the Regional Administrator of EPA, Region II, and signed by you or your representative. Your signing of such Consent Agreement would constitute a waiver of your right to request a hearing on any matter stipulated to therein.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an answer requesting a hearing or requesting an informal settlement conference, you may choose to comply with the terms of the Compliance Order, and to pay the proposed penalty. In that case, payment should be made by sending to the Regional Hearing Clerk, EPA, Region II, a cashier's or certified check in the amount of the penalty specified in the "Proposed Civil Penalty" section of this instrument. Your check must be made payable to: Treasurer, United States of America.

DATED: 26 SEP 1984

COMPLAINANT:

Original Signed by
Conrad Simon

CONRAD SIMON
Director
Air and Waste Management Division
Environmental Protection Agency
Region II

TO: Dr. Jorge Fernandez Pabon
President
Servicios Carbareon Inc.
Firm Devlivery
Ponce, Puerto Rico 00731

cc: Mr. Luis de la Cruz
Associate Member
Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910

bcc: John Jimenez, (2AWM-SW)
Weems Clevenger, (2CA)
Joe Rotola, (2AWM-SW)
Ron Testa, (2OPM-PA)
Judith Meritz, (2ORC-WTS)
Paul Giardina, (2AWM-RAD)
Carlos O'Neil, (2CA)
Joe Consentiono, (2ES-SM)

CERTIFICATE OF SERVICE

This is to certify that on the 27th day of Sept. 1984, I served a true and correct copy of the foregoing Complaint by certified mail to Dr. Jorge Fernandez Pabon, Servicios Carbareon Inc. I handcarried the original foregoing Complaint to the Regional Hearing Clerk.

Victoria McDonald